(3)

No. 94-3

IN THE

Supreme Court of the United States

October Term, 1994

REYNOLDSVILLE CASKET CO., *et al.*,
Petitioners,

vs.

CAROL L. HYDE,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF THE DALKON SHIELD CLAIMANTS TRUST IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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MOTION TO APPEAR AS *AMICUS*

The Dalkon Shield Claimants Trust ("Trust") respectfully reguests leave to appear as *amicus curiae* in this case.

Pursuant to Supreme Court Rule 37.2, the Trust has requested all parties to agree, in writing, to the Trust's participation as *amicus curiae*. Petitioner gave such consent (*see* Exh. A, attached) but Respondent refused (*see* Exh. B, attached). Respondent's counsel's refusal is based on: 1) his desire not "to make the matter any more complicated than it is"; and 2) his inability "to see where the filing of an Amicus brief . . . will assist the Court in rendering its decision." *See* Exh. B.

Both concerns are belied by the course of proceedings in the Ohio Supreme Court. Although the individual facts of *Hyde v. Reynoldsville Casket Co.*, 68 Ohio St. 3d 240, 626 N.E.2d 75 (1994), involve a traffic accident, three *amici curiae* filed briefs on behalf of the plaintiff (now Respondent) in the Ohio Supreme Court. Two of the *amici* were law firms that represent Dalkon Shield plaintiffs in Ohio, and the third was a state-wide organization of personal injury lawyers. Plaintiff's *amici* repeatedly informed the Ohio Supreme Court that this case has implications far beyond automobile accidents or the parties to the action, and particularly affects the claims of hundreds of Ohio residents allegedly injured by their use of a Dalkon Shield intrauterine device ("IUD").

The 16-page *amicus curiae* brief filed by Spangenberg, Shibley, Traci, Lancione & Liber purported to represent the interests of women who "currently [have] a claim pending against the Dalkon Shield Claimants Trust" and who "[a]t the time of filing . . . relied upon the case law of Ohio, which provided that the

statute of limitation did not provide a defense to defendant, A.H. Robins Company." *Amicus* articulated a concern that "[i]f *Bendix* is applied retroactively, as the Court of Appeals determined it should be, those women's claims may be extinguished, and their injuries may go uncompensated."

The 28-page brief filed by *amicus curiae* Brown & Szaller Co., L.P.A., further sought to present the Ohio Supreme Court with "the plight of a large group of its clients, residents of Ohio who relied on the provisions of the tolling statute." These residents were the "350 clients" of the law firm allegedly "injured by the Dalkon Shield IUD." The *amicus* brief claimed that "[a] significant portion of the Ohio residents who filed claims" in the Robins bankruptcy "relied on the provisions of the tolling statute . . . when they and their attorneys determined *when* to file legal claims against Robins in either state or federal court."

Finally, the Ohio Academy of Trial Lawyers filed its 44-page *amicus* brief on behalf of numerous plaintiffs, "including a multitude of Dalkon Shield litigants . . . ." "Compelled to interject" its "insights" into the appeal, the Association "urges this Court to carefully consider the issues presented herein and the impact of the resolution on these issues on pending and future litigation in Ohio."

The two Dalkon Shield law firm *amici* also filed *amicus* "reply briefs." In fact, counsel for plaintiff allowed counsel from the law firm of Brown & Szaller to present the "argument" portion of plaintiff's oral argument before the Ohio Supreme Court. Respondent's refusal now to consent to *amicus* participation is without sound basis.

In sum, this is not a case about two individuals in an automobile accident. The issues herein have much broader implication, and especially to Dalkon Shield Claimants and the Trust. Entities representing those interests present a unique and helpful perspective to this Court. Under the facts of this case, and given the unreasonableness of counsel for Respondent's withholding of consent, the Trust respectfully requests leave to file the attached proposed *amicus* brief in support of certiorari.

Respectfully submitted,

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QUESTION PRESENTED FOR REVIEW

Can the Ohio Supreme Court continue to apply Ohio's "tolling statute" to claims and cases against out-of-state corporations, even though this Court held that statute to be unconstitutional in a 1988 decision and applied the 1988 decision to the parties before it?

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PETITION FOR WRIT OF CERTIORARI
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BRIEF OF THE DALKON SHIELD CLAIMANTS TRUST IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. INTEREST OF THE *AMICUS*

This Brief is submitted on behalf of the Dalkon Shield Claimants Trust ("Trust"). The Trust was established to administer and distribute a limited fund to compensate users of the Dalkon Shield intrautrine device ("IUD") for injuries they claim to have suffered as a result of its use (hereafter "Dalkon Shield Claimants" or "Claimants"). The Trust has a compelling interest in the decision below, which deprives the Trust of its statute of limitations defense in Ohio. The effect of the Ohio Supreme Court's decision is to encourage litigation over the carefully crafted claims resolution procedures followed by the Trust. Those procedures provide fair and equitable compensation to Dalkon Shield Claimants with a mechanism which favors settlement over arbitration and litigation, thereby reducing transactional costs and preserving Trust assets for the benefit of deserving Claimants.

By refusing to acknowledge and apply controlling U.S. Supreme Court law, the Ohio Supreme Court has given Ohio's unconstitutional tolling statute new life. In so doing, the Ohio Court benefits Ohio Dalkon Shield Claimants to the detriment of Claimants in other states and encourages the depletion of Trust funds through litigation by Ohio Claimants. A brief background of the Trust will illustrate the adverse and discriminatory impact of *Hyde v. Reynoldsville Casket Co.*, 68 Ohio St. 3d 240, 626 N.E.2d 75 (1994).

A. The Dalkon Shield Claimants Trust and Claims Resolution Facility.

A.H. Robins, manufacturer of the Dalkon Shield IUD, filed for bankruptcy in 1985, on the heels of thousands of lawsuits filed by Dalkon Shield IUD users. During the pendency of that bankruptcy, some 197,000 Dalkon Shield Claimants filed claims. A plan of reorganization confirmed in 1988, and consummated in 1989, called for a unique approach to compensate as many of those Claimants as possible through a $2.23 billion fund administered by the Trust.

Four guidelines formulated by the Claims Resolution Facility ("CRF") drive every decision underlying the Trust's claims review process:

1. Provide an efficient economical mechanism for liquidating claims which favors settlement over arbitration and litigation, thereby reducing transaction costs;

2. Provide Claimants with an attractive alternative to trial by jury where settlement is not achieved;

3. Provide fair and equitable compensation based upon historic values, updated by current developments, to persons injured by the Dalkon Shield; and

4. Provide no compensation to persons not injured by the Dalkon Shield.

B. The Compensation Options for Dalkon Shield Claimants Across the Nation and in Ohio.

Consistent with the above guidelines, the CRF provides all Dalkon Shield Claimants with three[1] "options" for obtaining compensation. Option 1, chosen by 118,233 Claimants to date, provides a fixed payment for *de minimis* claims. Option 2, chosen by 15,258 Claimants to date, makes payment for more serious injury according to a schedule, without requiring proof of medical causation. Option 3, chosen by 42,732 Claimants to date, provides a detailed, individualized evaluation by the Trust of claims supported by medical records and evidence of medical causation, to produce an offer of compensation to the Claimant for all injuries caused by the Dalkon Shield. To date, over 80 percent of all Option 3 Claimants have had their claims reviewed. Of those, over 90 percent have accepted the proposed payment, resulting in total compensation payments of over $1.1 billion.

To encourage claims resolution over traditional litigation, the CRF prohibits the Trust from asserting certain defenses during the claims resolution phase under Options 1 and 2. For example, no claim under Options 1 or 2 is subject to a diminished value because of an actual or potential statute of limitations bar. Even under the Option 3 claims resolution process, the Trust has not asserted a statute of limitations defense. Further, a Claimant who is dissatisfied with the Option 3 offer, and who elects to resolve her claim through alternative dispute resolution ("ADR") procedure, may do so without being subjected to any statute of limitations

[1] A fourth "option" permits a Claimant to defer consideration of his or her claim without waiving any right to that claim.

defense. A separate alternative to litigation after rejection of an Option 3 offer is neutral arbitration, governed by a three-year statute of limitations. Finally, a Claimant who rejects her Option 3 offer and chooses traditional litigation is subject to all available Trust defenses, including the statute of limitations of the appropriate jurisdiction.

Two law firm *amici* representing Ohio Dalkon Shield Claimants filed briefs in the Ohio Supreme Court in the case below. The briefs urged the Court to reject retroactive application of *Bendix*, and thus eliminate the Trust's statute of limitations defense in Ohio. As was true of all Claimants nationwide, the Claimants represented by the law firm *amici* had numerous opportunities to obtain compensation, unfettered by Ohio's statute of limitations. Further, all Option 3 evaluations for these Claimants occurred long after the United States Court of Appeals for the Sixth Circuit and this Court ruled that Ohio's tolling statute was unconstitutional. The sole purpose of the law firm *amici* briefs was to obtain hindsight justification from the Ohio Supreme Court for the Claimants' rejection of the Trust's claims resolution process.

II. REASONS FOR ALLOWANCE OF WRIT AND SUMMARY REVERSAL

In his dissent to *Hyde v. Reynoldsville Casket Co.*, Justice Craig Wright of the Ohio Supreme Court, joined by Chief Justice Thomas Moyer, wrote:

> The court in *Bendix* [*Autolite Corp. v. Midwesco Enterprises*, 486 U.S. 888, 108 S.Ct. 2218, 100 L.Ed.2d 896 (1988)] ruled that Ohio has no power, under the Commerce Clause, to toll its statute of limitations against out-of-state entities. The Ohio Constitution cannot be used, as a majority does today, to revive this unconstitutional statute, that is, our state constitution cannot be used to accomplish what the Commerce Clause forbids. *In a word, should the Supreme Court grant review we invite peremptory reversal.*

See Appendix to Petition for Writ of Certiorari ("Pet. App.") at A16 (emphasis supplied). Justice Wright was right. Supreme Court Rule 16.1[2] permits a summary disposition on the merits when, as here, a decision is both clearly erroneous, and contrary to controlling Supreme Court precedent. Such a "peremptory reversal" should be entered in this case.

The Ohio Supreme Court cited to—but misconstrued—the controlling U.S. Supreme Court authority on the issue of retroactivity, *Harper v. Virginia Dept. of Taxation*, 509 U.S. _____, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993). Confirming the earlier decision of *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 111 S.Ct. 2439, 115 L.Ed.2d 481 (1991), *Harper* held:

> When this Court applies a rule of federal law to the parties before it, that rule is a controlling interpretation of federal law and must be given full

[2] "After consideration of the papers distributed pursuant to Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits."

> retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events pre-date or post-date our announcement of the rule.

Harper, 113 S.Ct. at 2517. The Ohio Supreme Court majority held that notwithstanding this unambiguous rule, it had the power to fashion a "remedy" for those plaintiffs whose suits are barred by the retroactive application of *Bendix*. That "remedy" was prospective application of *Bendix*. Such circular logic is invalid on its face and susceptible to a summary reversal.

A. This Court Did Not "Reserve" the Issue of Retroactive Application in *Bendix*.

The Ohio Supreme Court majority first assumed that because this Court "specifically declined to determine" whether its ruling in *Bendix Autolite Corp. v. Midwesco Enterprises,* 486 U.S. 888, 108 S.Ct. 2218, 100 L.Ed.2d 896 (1988), "should be applied prospectively only," it was up to the Ohio Court to take on "the task of determining whether the *Bendix* decision is to be applied retroactively." Pet. App. at A4. The Ohio Court misperceived its task. Because this Court applied the rule of *Bendix* to the parties before it, the retroactivity decision has already been made.

In *Bendix*, this Court refused to consider petitioner's argument that its ruling should be applied prospectively only, because petitioner had failed to preserve the issue. This Court then applied its ruling to the parties before it by affirming the decision of the Sixth Circuit, which in turn affirmed the District Court's grant of summary judgment in favor of the out-of-state defendant manufacturer. Thus, plaintiff's claims were barred by the statute of limitations and Ohio's tolling statute would not apply to save those claims.

As this Court unequivocally held in *Harper*, the question of retroactive application does not remain open unless a court reserves the question of "whether its holding should be applied *to the parties before it.*" *Harper,* 113 S.Ct. at 2518 (emphasis supplied), *quoting Beam, supra,* 111 S.Ct. at 2445. This Court did not reserve the question of whether its holding should be applied to the parties before it in *Bendix*—it applied its holding to the parties before it. Therefore, under *Harper, Bendix* must be applied retroactively to all cases, regardless of whether the events of those cases pre-date the announcement of the rule:

> When this Court applies a rule of federal law to the parties before it, that rule is a controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events pre-date or post-date our announcement of the rule.

Harper, 113 S.Ct. at 2517.

B. Even If The Issue of Retroactivity Were "Reserved," the Ohio Supreme Court Erred by Unilaterally Reviving and Applying the Doctrine of "Selective Prospectivity" to a Decision of this Court.

Having erroneously concluded that this Court "reserved" the issue of retroactive application in *Bendix*, the Ohio Supreme Court performed a perfunctory analysis of the factors set forth in *Chevron Oil Co. v. Huson,* 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971) and concluded that *Bendix* must apply prospectively only. Pet. App. at A5-A6. Since the rule of *Bendix* was applied to the parties in *Bendix*, the effect of the Ohio Supreme Court decision was to reinstate the discredited doctrine of selective prospectivity.

The doctrine of "selective" or "modified" prospectivity provides that the court can apply a new rule to the parties before it, "then return to the old one with respect to others arising on facts predating the pronouncement." *Beam, supra*, 111 S.Ct. at 2444. This Court noted in *Beam* that selective prospectivity was abandoned in the criminal context in *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987), and "appears never to have been endorsed in the civil context." *Id.* at 2445.

In *Harper*, this Court removed any doubt as to whether the doctrine has any continued validity. This Court explicitly extended "*Griffith's* ban against 'selective application of new rules' " to all civil cases. *Harper, supra*, 113 S.Ct. at 2517 (cites omitted). Such "selective temporal barriers," this Court held, would lead to the impermissible "shift and spring" of substantive law in response to individual equities. *Id.*

Because "selective prospectivity" is prohibited, the *Chevron* factors have no application to a case where the rule to be applied was applied to the parties before the court at the time the rule was formulated. *Harper, supra*, 113 S.Ct. at 2517. Those cases *must* be applied retroactively. *See, e.g., Landgraf v. USI Film Products*, 62 U.S.L.W. 4255, 114 S.Ct. 1483, 1504 n. 32, 128 L.Ed.2d 229 (1994) (although this Court's doctrine of judicial retroactivity "involved a substantial measure of discretion, guided by equitable principles" in 1974, when *Chevron* was controlling, *Harper* "established a firm rule of retroactivity").

The Ohio Supreme Court nevertheless relied on *Chevron* to hold that Ohio's tolling statute was unconstitutional as applied to the manufacturer in *Bendix*, but not as to other out-of-state manufacturers that allegedly committed torts in Ohio prior to the

Bendix decision. This decision is so clearly erroneous and contrary to established precedent as to invite summary reversal. *See, e.g., El Vocero de Puerto Rico v. Puerto Rico*, 61 U.S.L.W. 3769, 113 S.Ct. 2004, 2006, 124 L.Ed.2d 60 (1993) (granting certiorari and summarily reversing the Puerto Rico Supreme Court's refusal to apply a U.S. Supreme Court decision to a pending case); *Truesdale v. Aiken, Warden*, 480 U.S. 527, 107 S.Ct. 1394, 94 L.Ed.2d 539 (1987) (summary reversal of South Carolina Supreme Court's refusal to apply U.S. Supreme Court decision retroactively).

C. A State Supreme Court Cannot Revive a State Statute this Court Has Declared to be Unconstitutional by Adopting Selective Prospectivity as a "Remedy."

The second half of the Ohio Supreme Court majority opinion recognizes that *Harper* requires retroactive application of *Bendix*, but then misreads *Harper* as "allow[ing] state courts to tailor their own remedies as they determine the *manner* in which a supreme court opinion is to be retroactively applied." Pet. App. at A7 (emphasis supplied). The "manner" the Ohio Supreme Court chooses in applying *Bendix* retroactively is outright refusal to apply *Bendix* retroactively.

Contrary to the majority opinion in *Hyde*, the brief discussion of "remedy" in *Harper* is completely irrelevant to this case. The issue at those pages of this Court's decision was not the retroactive application of judicial decisions, but the constitutional duty placed upon states to provide either a prospective or retrospective relief mechanism for taxpayers who have been subjected to an unlawful tax.

A comprehensive analysis of the "remedy" issue is set forth in *McKesson Corp. v. Florida Alcohol & Tobacco Div.*, 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d

17 (1989). There, this Court establishes a constitutional framework within which states must provide procedural safeguards against an unlawful tax exaction. Such procedural safeguards may be in the form of a pre-deprivation hearing (*i.e.*, a method of protesting the tax without paying it) or in a refund of unlawfully paid taxes. The Due Process Clause of the Fourteenth Amendment prohibits states, however, from requiring taxpayers to pay a tax before challenging it—thus denying them of property without any pre-deprivation hearing—and refusing refunds after a successful challenge.

This case does not involve pre-deprivation or post-deprivation hearings in tax cases. This is a tort action in which the defendant raised the statute of limitations as a defense. The trial court granted a motion to dismiss on that basis and the Court of Appeals affirmed. Plaintiff's cause of action was time barred and it could not be "saved" by an unconstitutional statute. No "liability" has been adjudged and no "remedy" is appropriate. Plaintiff has been deprived of no property by state enforcement of an unlawful statute. To the contrary, plaintiff simply cannot maintain an untimely lawsuit based on a "tolling" statute that violates the Commerce Clause of the United States Constitution.

In fact, the Ohio Supreme Court majority's "remedy"—apply the tolling statute to all claims that accrued prior to this Court's decision in *Bendix*—completely swallows the doctrine of retroactivity. The "remedy" is no more and no less than one state's refusal to apply *Bendix* retroactively. According to this theory, even an explicit mandate from this Court that *Bendix* applies retroactively would have no effect. The Ohio Supreme Court could simply "tailor a remedy" that allowed it to apply retroactivity in a prospective "manner."

D. Ohio's Invocation of Its Constitution to Refuse Retroactive Application of *Bendix* Violates the Supremacy Clause of the United States Constitution.

Finally, the Ohio Supreme Court majority in *Hyde* drew upon its own decisions striking down Ohio statutes of repose to justify its refusal to apply *Bendix* retroactively. Specifically, the Court relied on the "open courts" provision of Article I, Section 16 of the Ohio Constitution to find a "conflict" between the Ohio Constitution and the federal "decisional rule" of retroactivity. Pet. App. at A8. The majority concluded that because the retroactive application of *Bendix* would have the effect of barring an action timely at the time it was filed, retroactive application must fall before the prevailing Ohio Constitution. *Id.*

Article VI, Clause 2 of the United States Constitution provides that all laws of the United States made pursuant to the United States Constitution "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Pet. App. at A36. The Ohio Supreme Court majority surmised that retroactivity is simply a "court-created doctrine of uniformity" that is not the supreme law of the land. Pet. App. at A9. The Ohio Court misconstrued the nature of the doctrine of retroactivity.

Retroactive application of a federal decision is a federal interpretation of federal law. Federal interpretations of federal law are just as binding on state courts as federal law. As this Court held in *Harper*:

> The Supremacy Clause, U.S. Const. Art. VI, Cl. 2, does not allow federal retroactivity doctrines to be supplanted by the invocation of a contrary approach

> to retroactivity under state law. Whatever freedom state courts may enjoy to limit the retroactive operation of their own interpretations of state law . . . cannot extend to their interpretation of federal law.

Harper, 113 S.Ct. at 2519. The Ohio Supreme Court majority's "manner" of applying a retroactive decision prospectively cannot supplant federal retroactivity.

Similarly misguided is the majority's conclusion that the doctrine of retroactivity "is not rooted in the United States Constitution." Pet. App. at A9. *Bendix* is firmly rooted in the Commerce Clause of the United States Constitution. The application of a federal rule or decision cannot be divorced from the substance of the decision. The Ohio Supreme Court's continued enforcement of the unconstitutional Ohio tolling statute under the guise of "prospective application" is a violation of the United States Constitution. What the Ohio Supreme Court has done, in effect, is revive Ohio's tolling statute for all Ohio plaintiffs whose claims accrued prior to the *Bendix* decision—except the plaintiff in *Bendix*.

Finally, to the extent that the Ohio Supreme Court has held that its "open courts" constitutional provisions can prevail over the Commerce Clause of the United States Constitution, it is in error. *See, Reynolds v. Simms*, 377 U.S. 533, 584, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) ("When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls"). The majority's discussion of Ohio law is simply an effort to reintroduce the tolling statute through a back door. *Compare Chevron Oil Co. v. Huson, supra*, 404 U.S. at 103-04 (1971) (federal common law could not be invoked to "reintroduce the doctrine [of laches] through the back door"). The confusion of the majority opinion, exposed in the dissent, should be summarily corrected.

E. Conclusion.

The bright line rule of retroactivity this Court established in *Beam*, and clarified in *Harper*, enhances uniformity and predictability in the application of United States Supreme Court decisions. The consistency thus engendered is particularly important in today's legal environment of burgeoning national litigation, where manufacturers of a product are likely to find themselves sued in 50 different states.

Equities also favor a bright line rule of retroactivity, as demonstrated by this case. No state other than Ohio has continued to enforce an unconstitutional tolling statute in the face of *Bendix*. *Compare Abramson v. Brownstein*, 897 F.2d 389 (9th Cir. 1990); *Juzwin v. Asbestos Corp., Ltd.*, 900 F.2d 686 (3d Cir.), *cert denied*, 498 U.S. 896 (1990); *Bottineau Farmers Elevator v. Woodward-Clyde Consultants*, 963 F.2d 1064 (8th Cir. 1992).[3] No Dalkon Shield Claimants other than Ohio Claimants can burden the limited Trust resources with litigation, free from the restraints imposed by a state statute of limitations.

Ohio alone—the state that precipitated the tolling statute struck down in *Bendix*—has refused to recognize this Court's retroactive application of *Bendix*. Instead, it has created its own rule of retroactivity—the prohibited doctrine of "selective" prospectivity. As a result, Ohio Dalkon Shield Claimants, unlike the Claimants of any other state, may invoke an unconstitutional statute, reject all fair and final offers of compensation from the Trust, and deplete Trust funds through traditional litigation.

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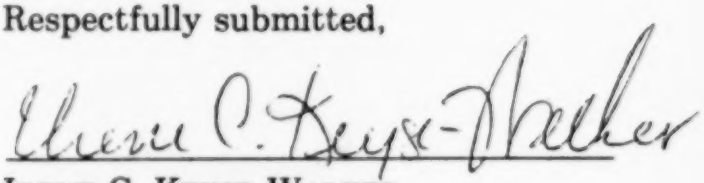
[3] Prior to the *Hyde* decision, Ohio state and federal courts applied *Bendix* retroactively. *See, e.g., Tesar v. Hallas*, 738 F. Supp. 240 (N.D. Ohio 1990); *Gray v. Osten*, 75 Ohio App. 3d 96, 598 N.E.2d 893 (1992).

The decision of the Ohio Supreme Court is so palpably wrong—and unfair—that further briefing and oral argument would simply be a waste of this Court's resources. The Trust therefore respectfully requests that this Court summarily accept certiorari, vacate the decision below, and enter judgment in favor of the petitioner, pursuant to Supreme Court Rule 16.1.

Respectfully submitted,



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July 26, 1994

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Re: Reynoldsville Casket Co., et al., Petitioners
v. Carol L. Hyde, Respondent
United States Supreme Court Case No. 94-3

Dear Ms. Keyes Walker:

This will confirm Reynoldsville Casket Co., petitioner, hereby consents to the Dalkon Shield Trust's appearance as amicus curiae in the captioned case.

Very truly yours,

William E. Riedel

WER:djk

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July 25, 1994

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Re: Reynoldsville Casket Company v. Carol Hyde
U.S. Supreme Court No. 94-3

Dear Ms. Keyse-Walker:

This will acknowledge receipt of your fax regarding the above-mentioned matter.

Sometime ago, you contacted me as attorney for Carol Hyde, the Respondent in the above-captioned case, seeking my consent to file an Amicus brief on behalf of the Dalkon Shield Claimants Trust. I informed you then, as now, that I did not want to make the matter any more complicated or serious than it is. After ten years of frustration in waiting for all the appeals and judicial procedures, I simply want my client to have her day in Court.

I fail to see where the filing of an Amicus brief as proposed in your request will assist the Court in rendering its decision.

You informed me that the Supreme Court has requested that I put into writing my basis for objectioning to your filing an Amicus brief in this matter. In accordance therewith, this letter shall constitute my response.

Sincerely,

EARDLEY & ZULANDT

David J. Eardley

David J. Eardley

DJE:smf